

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Amendment of the Commission's Rules
to Establish New Personal Communications
Services

)
)
) GEN Docket No. 90-314
) ET Docket No. 92-100
)

REPLY
COMMENTS

RECEIVED

JAN - 8 - 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**THE UNITED STATES INDEPENDENT
PERSONAL COMMUNICATIONS
ASSOCIATION**

Raymond A. Linsenmayer

Executive Research Coordinator

2300 M St NW

Suite 800

WASHINGTON DC 20037

January 8, 1993

No. of Copies rec'd
List A B C D E

019

TABLE OF CONTENTS

COMMENTS.....	1
I. INTRODUCTION AND STATEMENT OF INTEREST.....	2
II. DISCUSSION.....	2
A. The PCS Industry Requires the Proven Innovative Capabilities of Entrepreneurial Interests.....	2
B. Spectrum Auctions, in any Form are Prohibitive to the Entrepreneur.....	4
C. Post Card Lotteries will Minimize the Commission's Obligations while Preserving the Spectrum for the Sincere Entrepreneur.....	5
III. CONCLUSION.....	6

EXECUTIVE SUMMARY

The United States Independent Personal Communications Association, ("USIPCA") fears that the adoption of auctions or competitive hearings for the purpose of PCS license distribution would preclude innovative, entrepreneurial interests from participation in this arena. USIPCA believes that the Commission should adopt post card lotteries for this purpose as it will at once free the Commission's valuable resources from the lengthy procedure of application processing as it insures that the ultimate lottery winner is capable of timely development and service.

RECEIVED

JAN - 8 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Amendment of the Commission's Rules) GEN Docket No. 90-314
to Establish New Personal Communications) ET Docket No. 92-100
Services)

COMMENTS

The United States Independent Personal Communications Association, ("USIPCA") pursuant to the Commission's rules, hereby submits its reply comments in response to the *Notice of Proposed Rule Making and Tentative Decision* (the "Notice") released by the Commission on August 14, 1992 in this proceeding.¹ While USIPCA applauds many of the Personal Communication System, (PCS) rules outlined in the *Notice*, USIPCA is primarily concerned that the Commission maintain its current course of license distribution through lottery. USIPCA believes that a system grounded in auctions or comparative hearings would close the door to the entrepreneurial interests which have historically proven among the most innovative providers. In an fledgling industry whose trademark will be flexibility, perpetual technological innovation will be required and USIPCA contends that these innovative capabilities will be coveted.

USIPCA recognizes the Commission's time and financial obligations in processing numerous applications, and through these comments offers suggestions for alleviating them.

¹*Amendment of the Commission's Rules to Establish New Personal Communications Services*, 7 FCC Rcd 5676 (1992)[hereinafter cited as "Notice"].

USIPCA believes that a system of post card lotteries is one that would at once trim the Commission's processing obligations while insuring timely introduction of this service to the public.

I. INTRODUCTION AND STATEMENT OF INTEREST

The United States Independent Personal Communications Association is a Washington D.C. based trade association that represents the interests of the personal communications industries. USIPCA's interest in this docket stems from our predominantly entrepreneurial membership, and their desires to supply the public with these services. USIPCA's membership includes but is not limited to cellular system operators and license applicants, engineering companies, application preparation firms, and financing companies.

II. DISCUSSION

A. The PCS industry requires the proven innovative capabilities of entrepreneurial interests.

USIPCA endorses the Commission's primary goal concerning the distribution of PCS licenses, that of providing the public with the most rapid introduction of this technology possible. Its speedy deployment however, has thus far been plagued by problems concerning its proposed spectrum location, the 2 GHz band. This is the frequency on which point-to-point microwave and utility users currently operate.

In an attempt to satisfy this conflict, a proposal currently before the Commission would mandate co-primary status on the 2 GHz band between PCS and incumbent operators. After

a period of time, likely ten years, sole primary status would be assumed by the PCS operator, with the microwave and utility providers being relegated to a secondary status. It is widely expected that this proposal would result in the relocation of incumbent operators to higher frequencies, with a portion of the incurred cost assumed by PCS operators desiring sole use of the frequency. Concerns with this proposal revolve around the financial burden that would be imposed upon the PCS provider and the extent to which that cost would inhibit that operator from responding rapidly to the changing demands of the public. Microwave and utility providers for their part, assert that the 2 GHz band is the ideal location for their services, and that an untested higher frequency may be detrimental to their mission.

USIPCA contends therefore, that the timetable of PCS introduction is directly related to the speed at which technological innovation allows it to co-exist with the users that currently inhabit the 2 GHz band. USIPCA agrees with *Express Communications* in that "if the technological advances necessary to bring PCS to the marketplace rapidly are to become reality, smaller firms must not be precluded from participating as PCS licensees."² USIPCA believes that the Commission's goal should be an efficient program for the distribution of PCS licenses that recognizes the importance of the small entrepreneur. USIPCA argues that it is these entities that will be at the innovative forefront of this new medium.

² *Comments on 2 GHz Licensed PCS* by Express Communications, Inc. at page 3

One needs to look no farther than the Commission's own pioneer preference program to recognize the correlation between entrepreneurial spirit and technological innovation³. It has been shown beyond doubt that small but innovative companies will expend substantial creative resources when they are presented with the opportunity to implement their ensuing technology in the business world.⁴ If these same entities were precluded from participating in the PCS lotteries, many would focus their valuable creative energy elsewhere. This would be a blow to the infant PCS industry as it requires new technology to simply operate peacefully in the electromagnetic spectrum.

B. Spectrum Auctions, in any form, are prohibitive to the entrepreneur.

It is apparent through the *Notice* and through various public pronouncements that virtually every member of the Commission shares USIPCA's desire to allow entrepreneurial interests to flourish in the PCS license process. Appendix E of the *Notice* tries to reconcile two reformed auction schemes with the realization that a traditional auction program renders these small but able entities completely uncompetitive against their larger and richer counterparts⁵. Neither of the Commission's proposals however, would satisfy these desires and level the playing field for the entrepreneur. In each of the two proposed scenarios, the entities commanding the financial advantage could continue to wield it regardless of how the auctions stipulated payment,

³ See *Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services*, 6 FCC Rcd 3488, 3490 (1991) [See also, *Comments on 2 GHz Licensed PCS by Express Communications* at page 5.

⁴ Previous Entrepreneurial interests that have contributed technological advancements have been MCI Communications Corp., McCaw Cellular, and Fleet Call.

⁵ See *Notice*, supra note 1, 7 FCC Rcd at 5768

whether it be over 3 year period or whether it consist of an initial fee with subsequent royalty payments. In all likelihood, if the latter of the two proposals was to be adopted, the Commission would be saddled once again with the inefficient process of comparative hearings, held to determine the attributes of competing bids.

C. Post Card Lotteries will minimize the Commission's obligations while preserving the spectrum for the sincere entrepreneur.

USIPCA agrees in principle with the Comments of *The Lincoln Telephone and Telegraph Company* as they advocate post-card lotteries as the most efficient and equitable road down which the Commission can proceed.⁶ This method, along with the imposition of strict entry criteria and *trafficking* limitations for the tentative selectee will allow for the most expedient distribution of these licenses and in turn, the most rapid deployment of service to the public.

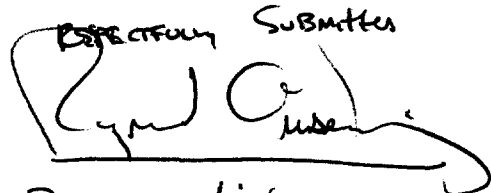
Post cards would be submitted as applications during a forty-eight hour filing window, all such post cards would be accepted for the initial lottery. From this application pool, a tentative selectee would subsequently be chosen. USIPCA recommends discontinuing the practice of choosing a contingent winner as that entity would have an incentive to initiate procedures to delay the awarding of the license and the commencement of the construction period. Once a tentative selectee is chosen, that applicant would have a period of forty-eight hours to comply with a number of strict, pre-determined requirements including submission of a market-specific firm financial commitment letter, a detailed engineering analysis and a detailed business plan. It is expected that serious applicants would have acquired this information long before filing the

⁶ *Comments on 2 GHz Licensed PCS* by The Lincoln Telephone and Telegraph Company at page 12.

initial application so a forty-eight hour deadline does not seem unreasonable. If these requirements are not met within the allotted time frame, a second tentative selectee will be chosen among the original post card applicants. This process can continue with a minimal cost to the Commission, until a qualified winner is selected.

III. Conclusion

USIPCA asserts that this scenario satisfies the Commissions very legitimate concerns about the PCS licensing process. It proposes a solution that will at once free the Commission's valuable resources from the lengthy procedure of application processing while it insures that the ultimate lottery winner is capable of timely development and service.

Respectfully Submitted

RAYMOND A. LINSENMAYER
The United States Independent
Personal Communications Association

2300 M St NW
Suite 800
Washington DC 20037
202 973 2858